BOOK REVIEWS.

THE AMERICAN JUDICIARY. By Simeon E. Baldwin. New York: The Century Co. 1905. pp. xiii, 403.

In the popular series of volumes to which this book belongs, describing "the manner in which the governmental agencies of the American State are organized and administered," the volume on "The Judiciary" is probably the one most difficult of preparation. It is fortunate that the task of writing it was committed to an eminent jurist whose style is as clear as his knowledge is wide and accurate. The result is a work of great value for popular information, presenting in language free from technicalities the principles of judicial administration, and abounding in interesting details gathered from a wide experience of the practical working of the courts.

The first part, occupying about one-third of the book, explains "the nature and scope of the judicial power in the United States." The second and larger part describes "the organization and practical working of American courts."

The author traces historically the early development of the American judiciary from its English origin, the separation of the judicial power from the executive and legislative powers, and the relations of the judiciary to the political departments of the government. He then explains clearly the important work of the judiciary in developing law, including the determining of what is not the law, though clothed in the forms of law; that is, of declaring a "law" unconstitutional.

The actual exercise of this power to set aside a legislative act is traced historically, and instructive figures are given. Thus it appears that twenty-one important acts of Congress, and over two hundred State statutes have been declared unconstitutional by the United States Supreme Court; while in individual States, thousands of legislative acts have been set aside by State courts as contravening the respective State constitutions. How peculiar this is to our system of government is strikingly shown in Judge Baldwin's statement that "this right of a court to set itself up against a legislature, and of a court of one sovereign to set itself up against the legislature of another sovereign, is something which no other country in the world would tolerate."

The present trend away from jury trials may be a surprise to many readers. Judge Baldwin says, "the number of civil causes tried to the jury, taking the country as a whole, is declining. . . . In several of the States a majority of the civil causes which might be tried to the jury are not: in Louisiana very few are. The tendency in England is also toward dispensing with the jury in ordinary civil trials. Over a million cases are brought every year in the English county courts, and in not one in a thousand of them is there a jury trial, although if the matter in demand is over £5 in value, either party may claim it."

The chapter on "The Law's Delays" is an interesting one. By way of illustration of what is possible under our system, an exceptional case is given of a brakeman who in 1882 was injured on a New York railroad, and brought suit against the company. A final decision was not reached until 1902, and during the twenty years seven appeals were taken. "The right of trial by jury is one cause of such delays. The broad right of appeal is another,"

A characteristically wise word uttered by Judge Baldwin is worthy of special notice. He says, "Government is a device for applying the power of all to secure the rights of each. Any government is good in which they are thus effectually secured. That government is best in which they are secured with the least force." The definition rules out attempts to sacrifice the rights of some to the whims and fads of others. That which follows rebukes the tendency of shallow minds, under the spur of so-called "patriotism," to consider our form of government the only good one for all kinds and conditions of men; it also rebukes the tendency so strong at the present time to distrust moral suasion and depend mainly on force to accomplish needed reforms.

THE LAW OF FIRE INSURANCE. By George A. Clement. New York: Baker, Voorhis & Co. 1905. Vol. II. pp. cxvii, 807.

This volume completes Mr. Clement's treatise on the subject of Fire Insurance. It takes as its basis those conditions of the standard forms of the fire insurance policy, and similar conditions in other forms, which specifically declare the policy to be void, if such conditions are not complied with. In other words, it is confined to that branch of fire insurance law which has to do with a policy that has been repudiated as void by the insurer. The first volume, noticed in 4 COLUMBIA LAW REVIEW 147, treated the branch of the subject, relating to a fire policy as a valid contract, in the event of fire and the adjustment of claims thereunder.

Such a treatment of the subject has its advantages, especially for the insurance agents and adjusters. It does not enable the author, however, to produce a book fit for the ordinary layman, or even for the law student. Indeed, the author rather plumes himself on the unique character of his work. It is neither a treatise nor a digest, as those words are ordinarily understood and applied, he assures us. The "text is not burdened and clouded with the individual views and opinions of the author, as to what the law or rules ought to be." It contains only "practical rules, affecting conduct, brought out in clear, sharp, and distinct relief, based on logical analysis." Whenever there is conflict in these rules, and such a situation frequently develops, the author undertakes to indicate it either in the express language of the rules or in the notes.

Notwithstanding the author's disclaimer, the work is really a digest of this branch of the law. So far as its statement of rules is concerned, it does not differ greatly from the work now publishing under the editorship of Edward Jenks, entitled, "A Digest of English Civil Law," which has been described as an attempt to digest